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**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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**DOCKET NO. NOR 42108**

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**THE SPRINGFIELD TERMINAL RAILWAY COMPANY --  
PETITION FOR DECLARATORY ORDER**

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**RESPONDENT FORE RIVER WAREHOUSING & STORAGE CO., INC.'S  
MOTION FOR LE AVE TO FILE REPLY  
AND INCORPORATED REPLY  
TO PETITIONER SPRINGFIELD TERMINAL RAILWAY COMPANY'S  
OBJECTION TO RESPONDENT'S MOTION TO COMPEL PRODUCTION OF  
DOCUMENTS AND ENLARGE SCHEDULING DEADLINES**

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Portland, ME 04112  
(207) 774-4000**

**Dated: October 27, 2009**

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

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DOCUMENTS AND ENLARGE SCHEDULING DEADLINES**

NOW COMES Respondent Fore River Warehousing & Storage Co., Inc. ("Fore River"), and moves for leave to reply to Petitioner Springfield Terminal Railway Company's ("STRC") Objection to Fore River's Motion to Compel the Production of Documents and to Enlarge Scheduling Deadlines. The basis for this motion is that STRC's Objection contains several assertions that require a response from Fore River in order for the Board to accurately assess the current dispute. Accordingly, Fore River respectfully requests that the Board grant it leave to file a reply, and accept the incorporated reply for filing.

In addition, Fore River notes the Parties agree that Fore River's Reply Statement should not be due October 28, 2009, as currently scheduled. The question is what schedule should be established to address the discovery dispute and subsequent deadlines.

In or about May 2009, during the discovery period, Fore River served STRC with formal discovery requests. STRC never objected to any of these requests. Nevertheless, STRC has persisted in failing to provide to Fore River many documents encompassed by

the discovery requests, including those identified by Fore River during the deposition of STRC's representative. Contrary to STRC's suggestion, Fore River did not simply fail to follow up on STRC's discovery responses; rather, STRC identified several types of documents for the first time in its deposition.

The documents that Fore River seeks, including the documents reflecting the storage in transit ("SIT") status of railcars released to Fore River, are relevant to the instant proceedings insofar as they bear on the circumstances leading up to the attempted imposition of demurrage and the responsibility of parties other than Fore River for the conditions causing a backup of rail cars. More importantly, however, Fore River need not prove that the documents are relevant in order to obtain them in discovery.

Under the Board's rules, as in most civil cases, "[i]t is not grounds for objection that the information sought will be inadmissible as evidence if the information sought appears reasonably calculated to lead to the discovery of admissible evidence." 49 C.F.R. § 1114.21(a)(2). The still-outstanding documents bear on any allegation of an arrangement between the parties with respect to demurrage and on the circumstances under which railcars were placed and under which demurrage allegedly accrued. Clearly, the request for these documents is "reasonably calculated to lead to the discovery of admissible evidence," and Fore River is entitled to their production.

STRC is attempting to impose on Fore River an obligation to prove the relevance of the requested documents before STRC will produce them. Such a requirement cannot survive scrutiny; Fore River cannot be required to explain the relevance of particular documents without even having had the opportunity to review and analyze them. If the

documents are indeed irrelevant, and Fore River argues from them, STRC will have the opportunity to respond in its Rebuttal.

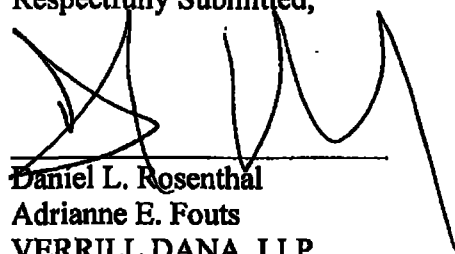
With respect to the documents for which STRC claims it requires consent from International Paper/Verso ("IP/Verso"), the onus is on STRC to obtain whatever consent may be required in order to comply with the discovery requests that encompass those documents. Furthermore, with respect to the Side Track Agreement and the GTI Exempt Boxcar Circular No. 1, Fore River does not have these documents. STRC may wish to stipulate that the documents are missing and cannot be used in STRC's own argument.

Despite STRC's Objection, the Parties are in the process of attempting to negotiate an appropriate extension of time for Fore River to file its Reply Statement. In any event, the Parties agree that Fore River's Reply Statement should not be due October 28, 2009, as currently scheduled. Fore River is willing to accept an interval shorter than requested, between production of the requested documents and Fore River's Reply Statement being due. However, Fore River is entitled to all of the documents requested, and time to adequately review and analyze those documents, before it can be required to file its Reply Statement. Fore River respectfully requests that the Board dispose of the present motion in a manner that preserves Fore River's discovery rights and addresses STRC's intransigence.

WHEREFORE, Fore River respectfully requests that the Board grant its Motion to Compel the Production of Documents.

Dated: October 27, 2009

Respectfully Submitted,



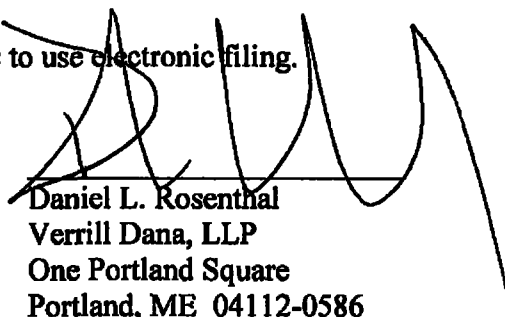
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Attorneys for Respondent  
Fore River Warehousing &  
Storage Co., Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing has been furnished to Keith R. Jacques, Attorney for Springfield Terminal Railway Company, Smith Elliott Smith & Garmey, 199 Main Street, PO Box 1179, Saco, ME 04072 via electronic mail this 27<sup>th</sup> day of October, 2009, per agreement of the parties to use electronic filing.

Dated: October 27, 2009



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